IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

Writ Petition No. 6516/2016.
(State Bank of India Vs. Goverment of Maharashtra & ors.)
With
Writ Petition No. 4731/2016.
(State Bank of India Vs. Goverment of Maharashtra & ors.)

Office Notes, Office Memoranda of Coram, appearances, Court's orders or directions and Registrar's orders.	Court's or Judge's orders

Shri M. Anilkumar Shankarlal, Advocate for petitioner.
Shri J.P. Junghare, Advocate for petitioner.
Shri H.M. Bondre, Advocate for petitioner.
Shri A.S. Fulzele, Acting Government Pleader for respondent Nos. 1 to 4.

CORAM : B.P. DHARMADHIKARI & ARUN D. UPADHYE, JJ.

DATED : AUGUST 29, 2017.

Secured creditor is before this Court with contentions that Sales Tax Department of respondent Nos. 1 and 2 have in collusion with borrowers attempted to defeat the recovery from respondent Nos. 5 to 7 in these Writ Petitions.

2. Advocate M. Anilkumar submits that in view of law then prevailing an interim application was moved in DRAT pointing out undue intervention of Sales Tax Department and urging that properties can be sold and dues can be proportionately recovered by Sales Tax Department as also secured creditors. He states that statement was made in DRAT that priorities as per statutory provisions could have been worked out between Sales Tax Department and secured creditor, but then for that purpose, auction of secured assets could not have been postponed.

3. Today, he has invited our attention to Section 31(B) added to Recovery of Debt Due to Banks and Financial Institution Act, 1993 which has been added with effect from 16.08.2016. He contends that now overriding effect has been given to recoveries by secured creditors. By way of abundant precaution, he contends that in any case, that controversy can be still worked out by parties but the petitioner and the recovery must proceed further.

4. He also draws support from judgment delivered on 26th September, 2016 in Writ Petition No. 6844 of 2015.

5. In Writ Petition No. 6844 of 2015, secured creditors had opposed recovery by Sales Tax Officer - Value Added Tax Officer. In facts of said matter and after noticing Section 31(B) of Recovery of Debt Due to Banks and Financial Institution Act, 1993, the petitioner was left free to take benefit of that provision. Writ Petition was allowed and auction conducted by the Sales Tax Department was quashed.

6. In present facts, we find that when effort of petitioner and respondent Nos. 1 and 2 is to secure their respective dues, priority as per law, needs to be accorded after keeping in mind Section 31(B). The borrower however, can not be permitted to take advantage of internal disputes between petitioner and respondents.

7. In writ petition No. 6516 of 2016, as per direction issued by the DRAT on 04.03.2016 while disposing of interim application No. 459 of 2016, the petitioner approached Sales Tax Department and sought its NOC, however, has not received any response.

8. The respondent Nos. 1 and 2 have filed reply-affidavit on 19th July, 2017. It is sworn by Poonamchand K. Agrawal, Joint Commissioner, Sales Tax, Nagpur. He has not pointed out any effective step taken after 04.03.2016 to recover the sales tax dues . Therefore, the contention of the petitioner that Sales Tax Department is trying to assist the borrowers gains some weight.

9. We, in this situation, permit the petitioner to proceed further as per law to recover its dues from the respondents – borrowers. The recovery proceeding shall be conducted with full notice to and knowledge of respondent Nos. 1 and 2. Public notice or advertisement shall carry the mention of claim of Sales Tax Department also. Amounts of sale consideration shall be initially deposited in separate bank account with petitioner only entitlement of petitioner and respondent Nos. 1 or 2, proportionately shall then be worked out as per law. With these directions, we partly allow both the petitions and dispose of it. No costs.

Judge **Judge**

Gohane